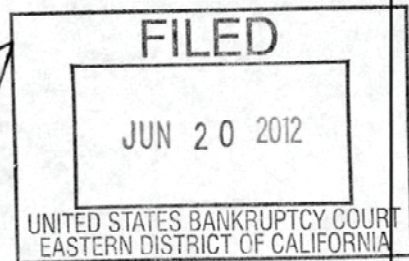


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 12-24218-C-13
FREDA HINES,)
Debtor(s).)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION
DENYING MOTION FOR RELIEF FROM ORDER

Freda Hines, the Chapter 13 Debtor has filed an ex parte motion for relief from an order granting relief from the automatic stay to Wells Fargo Bank, N.A., to proceed with exercising and enforcing its non-bankruptcy rights and remedies to obtain possession of the property commonly known as 3090 Swansea Way, Rancho Cordova, California. The order was filed on June 11, 2012. Dckt. 64. On June 15, 2012, Ms. Hines filed the present ex parte motion for relief. No proof of service has been filed for the present motion.

In seeking relief from the order vacating the automatic stay, Ms. Hines states the following grounds:

1 1. Ms. Hines filed a "motion to value collateral from stay"
2 on or about May 16, 2012, which was in the appropriate time to
3 respond to a motion to value.

4 2. On or about May 21, 2012, Ms. Hines served on Wells Fargo
5 Bank, N.A. a Qualified Written Request in accordance with RESPA.
6 This is stated to have been faxed and mailed via certified mail ten
7 days before the hearing on the motion for relief from stay.

8 3. A copy of the Qualified Written Request was sent to the
9 Consumer Financial Protection Bureau and to the Office of the
10 Comptroller of the Currency.

11 Therefore, based on those grounds, Ms. Hines asserts that she
12 is entitled to relief from the order vacating the automatic stay.
13 Ms. Hines has also provided her declaration, in which she asserts
14 that (1) her motion to value collateral from stay filed on May 16,
15 2012, was not considered at the June 5, 2012 hearing on the motion
16 for relief from the stay, and (2) Wells Fargo Bank, N.A. received
17 the Qualified Written Request prior to the hearing on the motion
18 for relief from the stay. Dckt. 65.

19 **REVIEW OF THE FILES IN THIS CASE**

20 The motion for relief from the automatic stay was filed by
21 Wells Fargo Bank, N.A. on May 9, 2012. That motion was filed
22 pursuant to Local Bankruptcy Rule 9014-1(f)(1), for which a written
23 opposition was required to be filed and served at least 14 days
24 prior to the June 5, 2012 hearing. See notice of hearing for
25 motion for relief from stay, Dckt. 27. The only responsive
26 pleading to the motion for relief from the stay was the Chapter 13
27 Trustee's statement of non-opposition. Dckt. 63.

28 On May 18, 2012, Ms. Hines filed a pleading titled "Amended -

1 Motion to Value Collateral; Debtor. Points and Authorities;
2 Declaration of Debtor in Support of Motion (Wells Fargo Bank)."
3 Dckt. 46. The caption also includes the address for the
4 3090 Swansea Way, Rancho Cordova, California property. The first
5 two pages of this pleading are notice that a hearing has been
6 scheduled on the motion to value for September 24, 2012. (No
7 explanation is provided for why the hearing on a motion which
8 requires either 14 days' or 28 days' notice under Local Bankruptcy
9 Rule 9014 is set for hearing on 129 days' notice.)

10 Page 3 of the pleading consists of a summary and points and
11 authorities. The summary states that Wells Fargo Bank claims to
12 have a security interest in Ms. Hines property, but that Wells
13 Fargo Bank has failed to file a proof of claim in her bankruptcy
14 case. It further states that the motion for relief from the
15 automatic stay is supported by a copy of a "Trustee Deed Upon
16 Sale," but no "Grant Deed" was attached to that motion for relief
17 from the stay. It is contended that Ms. Hines wants to question
18 Wells Fargo Bank as to its standing, have it produce the original
19 note, and file an adversary proceeding. It is asserted that until
20 Wells Fargo Bank can show they legally acquired the note, the
21 automatic stay must be reinstated.

22 **RELIEF FROM A JUDGMENT OR ORDER**

23 The reconsideration of a judgment or order is governed by
24 Federal Rule of Civil Procedure 60(b), as made applicable in this
25 case by Federal Rule of Bankruptcy Procedure 9024, which
26 incorporates minor modifications that do not apply here. Grounds
27 for relief from a final judgment, order, or other proceeding are
28 limited to:

- 1 (1) Mistake, inadvertence, surprise, or excusable neglect;
- 2 (2) Newly discovered evidence that, with reasonable
- 3 diligence, could not have been discovered in time to move
- 4 for a new trial under Rule 59(b);
- 5 (3) fraud (whether previously called intrinsic or extrinsic),
- 6 misrepresentation, or misconduct by an opposing party;
- 7 (4) The judgment is void;
- 8 (5) The judgment has been satisfied, released, or discharged;
- 9 it is based on an earlier judgment that has been reversed
- 10 or vacated; or applying in prospectively is no longer
- 11 equitable; or
- 12 (6) Any other reason that justifies relief.

13 Fed. R. Civ. P. 60(b). The court uses equitable principles when
14 applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE
15 AND PROCEDURE § 2857 (3rd ed. 1998). No grounds under Rule 60(a),
16 clerical error, oversight or omission in the order has been shown.
17 In considering such a motion in connection with a default judgment
18 (similar to a ruling on a motion for which the court had no
19 opposition in front of it, the court also considers (1) whether the
20 movant/plaintiff will be prejudiced, (2) whether the
21 defendant/respondent has a meritorious defense, and (3) whether
22 culpable conduct of the defendant/respondent led to the default.
23 *Cassidy v. Tenorio*, 856 F.2d 1412, 1415 (9th Cir. 1988).

24 DISCUSSION

25 The substance of the argument for relief from the automatic
26 stay boils down to (1) Ms. Hines, a self-represented litigant,
27 filed a separate motion to value the collateral of Wells Fargo
28 Bank, N.A. disputing the Bank's right to proceed in enforcing its

1 interests, (2) Ms. Hines seeks to challenge the Bank's standing and
2 wants it to produce the original note, and (3) the automatic stay
3 should remain in place until Wells Fargo Bank, N.A. can prove that
4 it has the original note.

5 In addition to the motion to value, Ms. Hines filed a
6 Chapter 13 Plan on May 18, 2012. Dckt. 45. The plan does not
7 provide for (1) any monthly payments to be made to the Chapter 13
8 Trustee, (2) any period of time which plan payments are to be made
9 to the Chapter 13 Trustee, (3) any payment of Class 1 secured
10 claims (including the claim alleged to be secured by her home),
11 (4) any Class 2 secured claims, (5) surrender of property to
12 creditors holding Class 3 secured claims, (6) any Class 4 secured
13 claims, (7) any Class 5 priority claims, (8) any Class 6 unsecured
14 claims, and (9) any class 7 general unsecured claims. The Plan is
15 not signed by the Debtor, and is merely a blank plan form which has
16 Ms. Hines Chapter 13 case number and name written in the caption
17 for this pleading.

18 Schedule A filed by Ms. Hines lists the Swansea Way property
19 as an asset with a value of \$91,500.00 and subject to secured
20 claims in the amount of \$91,500.00. Schedule D lists "Wells Fargo"
21 as having an unliquidated secured claim in the amount of
22 \$101,916.37. The collateral for the secured claim is not
23 identified, but no other creditors with secured claims are listed
24 on Schedule D. Schedule E lists no priority claims and Schedule F
25 lists no general unsecured claims. The only creditor listed by
26 Ms. Hines is "Wells Fargo." Dckt. 17.

27 A motion for relief from the automatic stay is a limited scope
28 proceeding addressing only the issues arising under 11 U.S.C.

1 § 362. See *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr.
2 LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay
3 proceedings are summary proceedings which address issues arising
4 only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS
5 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d
6 738, 740 (9th Cir. 1985)). The court does not determine underlying
7 issues of ownership, contractual rights of parties, or issue
8 declaratory relief. To the extent that a dispute exists, it is
9 clear that Ms. Hines seeks to litigate the ownership of the note
10 and obtain a declaration of Wells Fargo Bank, N.A. rights
11 thereunder, if any. Such is well beyond the scope of a summary
12 relief from stay proceeding, and must be a separate civil action
13 commenced as an adversary proceeding pursuant to Federal Rule of
14 Bankruptcy Procedure 7001, or an action commenced in the District
15 Court (if federal jurisdictional grounds exist) or the state court.

16 As set forth in the court's findings in granting the motion
17 for relief from the automatic stay, Wells Fargo Bank, N.A. sought
18 relief to enforce rights it asserts exist pursuant to a Trustee's
19 Deed. Civil Minutes, Dckt. 63. In addition to a copy of the
20 Trustee's Deed, Wells Fargo Bank, N.A. also provided the court with
21 a copy of a state court writ of possession for the Swansea Way
22 Property. Exhibits 1, 6, Dckt 29. For a motion for relief from
23 this automatic stay, this presented the court with a colorable
24 claim and basis for Wells Fargo Bank, N.A. to obtain relief from
25 the automatic stay to enforce any rights arising from any interests
26 in the Swansea Way Property.

27 The motion to value does not alter the colorable claim
28 asserted by Wells Fargo Bank, N.A. seeking relief from the

1 automatic stay. The phrase "motion to value" is commonly used in
2 connection with a motion for the court to value the secured portion
3 of a creditor's claim pursuant to 11 U.S.C. § 506(a). In such a
4 motion the court does not determine the respective rights of the
5 parties in the claim, but determines the value of the collateral
6 and what portion of that value, if any, exists to secure the claim
7 at issue. The pleading titled "Motion to Value Collateral" does
8 not seek such relief. Dckt. 35. Rather, it states an indirect
9 opposition to the motion for relief, stating that Ms. Hines wants
10 to challenge the validity of Wells Fargo Bank, N.A. asserting any
11 interest arising from the note secured by her property. Though not
12 presented to the court at the time of the hearing, such a
13 contention does not state an opposition to relief from the stay.
14 Rather, it clearly states that Ms. Hines desires and intends to
15 litigate the extent and validity of any interest of Wells Fargo
16 Bank, N.A. in the note and the Swansea Way Property - which issues
17 must be litigated in an adversary proceeding, District Court action
18 (if federal jurisdiction exists) or a state court action.

19 Additionally, the Chapter 13 bankruptcy case does not provide
20 for the payment of the admitted secured claim, whoever is the
21 creditor. Rather, the bankruptcy case appears to exist for no
22 purpose other than Ms. Hines to obtain protection from the
23 automatic stay. If she has a *bona fide* dispute to litigate with
24 Wells Fargo Bank, N.A., she may do so in the appropriate District
25 Court or state court action - for which both courts may issue such
26 preliminary injunctive relief to maintain the *status quo* as
27 warranted. The automatic stay is not a free floating injunction
28 which bypasses the normal requirements for injunctive relief, such

1 as Federal Rule of Civil Procedure 65, except as appropriate for
2 the administration of the bankruptcy estate or prosecution of a
3 confirmable plan. There is no confirmable bankruptcy plan before
4 the court, no plan which addresses any liens against any property
5 of Ms. Hines, and no plan which provides for payment of creditor
6 claims. There are no creditors, taking Ms. Hines at her word under
7 penalty of perjury on the schedules, for which any debt is to be
8 paid through any plan on this case, other than possibly the claim
9 or interests of Wells Fargo Bank, N.A.

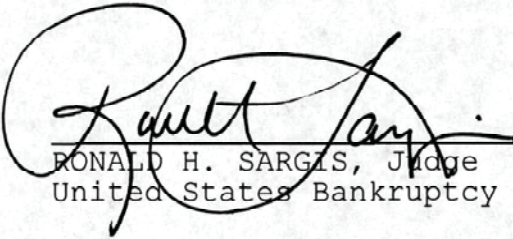
10 **RULING**

11 Freda Hines has not shown grounds for granting relief from the
12 order vacating the automatic stay allowing Wells Fargo Bank, N.A.
13 to proceed with enforcing its rights, whatever they may be, to
14 obtain possession of property commonly known as the 3090 Swansea
15 Way, Rancho Cordova, California. Ms. Hines may assert whatever
16 rights she has, and contest the interests of Wells Fargo Bank,
17 N.A., unimpeded by the order vacating the stay. This does not
18 prejudice Ms. Hines in this bankruptcy case. Further, even if the
19 court had been presented with the information presented in the
20 motion to value collateral as an opposition to the motion for
21 relief, it does not state a meritorious defense. Further, it
22 demonstrates that any issues to be resolved between Ms. Hines and
23 Wells Fargo Bank, N.A. over its colorable claim based on the
24 Trustee's Deed, must be litigated in a forum other than a motion
25 for relief.

26 The Motion for Relief From Judgement/Order is denied. This
27 Memorandum Opinion and Decision constitutes the court's findings of
28 fact and conclusions of law pursuant to Federal Rule of Civil

1 Procedure 52 and Federal Rules of Bankruptcy Procedure 9014 and
2 7052. The court shall issue a separate order consistent with this
3 Decision.

4 Dated: June 20, 2012

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6 
7 RONALD H. SARGIS, Judge
8 United States Bankruptcy Court
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CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that the attached document(s) was served by mail to the following entities listed at the address(es) shown below:

Service List:

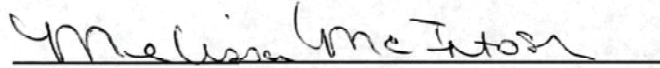
David Cusick
PO Box 1858
Sacramento, CA 95812-1858

Freda Hines
3090 Swansea Way
Rancho Cordova, CA 95670

Angie Marth
15000 Surveyor Blvd
Addison, TX 75001

Office of the U.S. Trustee
Robert T Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

DATE: 6/21/12


Deputy Clerk